

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBIN BLAKE COMBS, SR.,

Plaintiff,

v.

JOSEPH D. LEHMAN, CATHERINE
KNOX, DOUGLAS WADDINGTON,
PATRICK FARWELL, LUCIANO L.
FIGUEROA, MARC F. STERN, DEAN
A. MASON, CLINT MAY, ANITA
TRAVIS, MUHAMMAD AIJAZ
KHURSHID, DAVE THOMPSON,
DARRYL DENISON, MATTHEW
GAMBONE, SUE MCMINN, JUDY
CHELOTTI, KEVEN SHANAHAN,
ELDON LEINWEBER, JOHN DOE,
JANET BLACK, and SUE GREILING

Defendants.

No. C08-5063 RJB/KLS

**ORDER ADOPTING REPORT AND
RECOMMENDATION, GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT, AND
DISMISSING CASE**

The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 157), objections to the Report and Recommendation (Dkt. 161), defendants' response to the objections (Dkt. 162), plaintiff's reply (Dkt. 163), and the remaining record, does hereby find and **ORDER:**

- (1) In his objections, plaintiff contends that he exhausted his administrative remedies, and that defendants were deliberately indifferent to his serious medical needs, in violation of the Eighth Amendment. Dkt. 161. In his reply, plaintiff contends that the

1 treatment provided him did not alleviate his pain, and, on more than one occasion,
2 medical providers did not even see him. Dkt. 163.

- 3 (2) The court concurs with the conclusion of the magistrate judge that plaintiff did not
4 properly exhaust his administrative remedies as to all of his claims. Plaintiff did not
5 exhaust his administrative remedies with regard to his claim that the mattress on
6 which he is/was sleeping is too hard, and he did not exhaust his administrative
7 remedies with regard to most of his claims about the adequacy of his medical care.
8
9 (3) Even if plaintiff had exhausted his administrative remedies as to all of the claims he
10 made about the adequacy of his medical care, defendants have met their burden to
11 establish that there are no genuine issues of material fact precluding summary
12 judgment. Plaintiff has demonstrated that he has a chronic pain problem related to his
13 neck, shoulders and upper back. He has been provided ongoing treatment for his pain
14 by several prison medical providers. Plaintiff disagrees with some of the treatment
15 decisions made by prison medical staff. Such disagreement does not constitute
16 deliberate indifference to his serious medical needs. Moreover, because plaintiff has
17 not shown that his constitutional rights have been violated, defendants are entitled to
18 qualified immunity.
19
20 (4) Accordingly, the Court **ADOPTS** the Report and Recommendation. Defendants'
21 motion for summary judgment (Dkt. 142) is **GRANTED**. Plaintiff's claim that
22 defendants have provided him with a mattress that is too hard is **DISMISSED**
23 **WITHOUT PREJUDICE**. The remaining claims are **DISMISSED WITH**
24 **PREJUDICE**.
25
26 (5) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants
and to the Hon. Karen L. Strombom.

DATED this 23rd day of December, 2010.



ROBERT J. BRYAN
United States District Judge
